

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 844**

FINAL READING

Introduced by Karpisek, 32; Christensen, 44; Pedersen, 39.

Read first time January 10, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section  
2 28-416, Revised Statutes Cumulative Supplement, 2006; to  
3 change penalty provisions for marijuana possession; and  
4 to repeal the original section.

5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-416, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           28-416 (1) Except as authorized by the Uniform Controlled  
4 Substances Act, it shall be unlawful for any person knowingly or  
5 intentionally: (a) To manufacture, distribute, deliver, dispense,  
6 or possess with intent to manufacture, distribute, deliver, or  
7 dispense a controlled substance; or (b) to create, distribute,  
8 or possess with intent to distribute a counterfeit controlled  
9 substance.

10           (2) Except as provided in subsections (4), (5), (7), (8),  
11 (9), and (10) of this section, any person who violates subsection  
12 (1) of this section with respect to: (a) A controlled substance  
13 classified in Schedule I, II, or III of section 28-405 which is an  
14 exceptionally hazardous drug shall be guilty of a Class II felony;  
15 (b) any other controlled substance classified in Schedule I, II, or  
16 III of section 28-405 shall be guilty of a Class III felony; or (c)  
17 a controlled substance classified in Schedule IV or V of section  
18 28-405 shall be guilty of a Class IIIA felony.

19           (3) A person knowingly or intentionally possessing a  
20 controlled substance, except marijuana, unless such substance was  
21 obtained directly or pursuant to a medical order issued by a  
22 practitioner authorized to prescribe while acting in the course of  
23 his or her professional practice, or except as otherwise authorized  
24 by the act, shall be guilty of a Class IV felony.

25           (4) (a) Except as authorized by the Uniform Controlled

1 Substances Act, any person eighteen years of age or older who  
2 knowingly or intentionally manufactures, distributes, delivers,  
3 dispenses, or possesses with intent to manufacture, distribute,  
4 deliver, or dispense a controlled substance or a counterfeit  
5 controlled substance (i) to a person under the age of eighteen  
6 years, (ii) in, on, or within one thousand feet of the real  
7 property comprising a public or private elementary, vocational, or  
8 secondary school, a community college, a public or private college,  
9 junior college, or university, or a playground, or (iii) within one  
10 hundred feet of a public or private youth center, public swimming  
11 pool, or video arcade facility shall be punished by the next higher  
12 penalty classification than the penalty prescribed in subsection  
13 (2), (7), (8), (9), or (10) of this section, depending upon the  
14 controlled substance involved, for the first violation and for a  
15 second or subsequent violation shall be punished by the next higher  
16 penalty classification than that prescribed for a first violation  
17 of this subsection, but in no event shall such person be punished  
18 by a penalty greater than a Class IB felony.

19 (b) For purposes of this subsection:

20 (i) Playground shall mean any outdoor facility, including  
21 any parking lot appurtenant to the facility, intended for  
22 recreation, open to the public, and with any portion containing  
23 three or more apparatus intended for the recreation of children,  
24 including sliding boards, swingsets, and teeterboards;

25 (ii) Video arcade facility shall mean any facility

1 legally accessible to persons under eighteen years of age, intended  
2 primarily for the use of pinball and video machines for amusement,  
3 and containing a minimum of ten pinball or video machines; and

4 (iii) Youth center shall mean any recreational facility  
5 or gymnasium, including any parking lot appurtenant to the facility  
6 or gymnasium, intended primarily for use by persons under eighteen  
7 years of age which regularly provides athletic, civic, or cultural  
8 activities.

9 (5) (a) Except as authorized by the Uniform Controlled  
10 Substances Act, it shall be unlawful for any person eighteen  
11 years of age or older to knowingly and intentionally employ, hire,  
12 use, cause, persuade, coax, induce, entice, seduce, or coerce any  
13 person under the age of eighteen years to manufacture, transport,  
14 distribute, carry, deliver, dispense, prepare for delivery, offer  
15 for delivery, or possess with intent to do the same a controlled  
16 substance or a counterfeit controlled substance.

17 (b) Except as authorized by the Uniform Controlled  
18 Substances Act, it shall be unlawful for any person eighteen years  
19 of age or older to knowingly and intentionally employ, hire, use,  
20 cause, persuade, coax, induce, entice, seduce, or coerce any person  
21 under the age of eighteen years to aid and abet any person in  
22 the manufacture, transportation, distribution, carrying, delivery,  
23 dispensing, preparation for delivery, offering for delivery, or  
24 possession with intent to do the same of a controlled substance or  
25 a counterfeit controlled substance.

1           (c) Any person who violates subdivision (a) or (b) of  
2 this subsection shall be punished by the next higher penalty  
3 classification than the penalty prescribed in subsection (2), (7),  
4 (8), (9), or (10) of this section, depending upon the controlled  
5 substance involved, for the first violation and for a second or  
6 subsequent violation shall be punished by the next higher penalty  
7 classification than that prescribed for a first violation of this  
8 subsection, but in no event shall such person be punished by a  
9 penalty greater than a Class IB felony.

10           (6) It shall not be a defense to prosecution for  
11 violation of subsection (4) or (5) of this section that the  
12 defendant did not know the age of the person through whom the  
13 defendant violated such subsection.

14           (7) Any person who violates subsection (1) of this  
15 section with respect to cocaine or any mixture or substance  
16 containing a detectable amount of cocaine in a quantity of:

17           (a) One hundred forty grams or more shall be guilty of a  
18 Class IB felony;

19           (b) At least twenty-eight grams but less than one hundred  
20 forty grams shall be guilty of a Class IC felony; or

21           (c) At least ten grams but less than twenty-eight grams  
22 shall be guilty of a Class ID felony.

23           (8) Any person who violates subsection (1) of this  
24 section with respect to base cocaine (crack) or any mixture or  
25 substance containing a detectable amount of base cocaine in a

1 quantity of:

2 (a) One hundred forty grams or more shall be guilty of a  
3 Class IB felony;

4 (b) At least twenty-eight grams but less than one hundred  
5 forty grams shall be guilty of a Class IC felony; or

6 (c) At least ten grams but less than twenty-eight grams  
7 shall be guilty of a Class ID felony.

8 (9) Any person who violates subsection (1) of this  
9 section with respect to heroin or any mixture or substance  
10 containing a detectable amount of heroin in a quantity of:

11 (a) One hundred forty grams or more shall be guilty of a  
12 Class IB felony;

13 (b) At least twenty-eight grams but less than one hundred  
14 forty grams shall be guilty of a Class IC felony; or

15 (c) At least ten grams but less than twenty-eight grams  
16 shall be guilty of a Class ID felony.

17 (10) Any person who violates subsection (1) of this  
18 section with respect to amphetamine, its salts, optical isomers,  
19 and salts of its isomers, or with respect to methamphetamine, its  
20 salts, optical isomers, and salts of its isomers, in a quantity of:

21 (a) One hundred forty grams or more shall be guilty of a  
22 Class IB felony;

23 (b) At least twenty-eight grams but less than one hundred  
24 forty grams shall be guilty of a Class IC felony; or

25 (c) At least ten grams but less than twenty-eight grams

1 shall be guilty of a Class ID felony.

2 (11) Any person knowingly or intentionally possessing  
3 marijuana weighing more than one ounce but not more than one pound  
4 shall be guilty of a Class ~~IIIA~~ III misdemeanor.

5 (12) Any person knowingly or intentionally possessing  
6 marijuana weighing more than one pound shall be guilty of a Class  
7 IV felony.

8 (13) Any person knowingly or intentionally possessing  
9 marijuana weighing one ounce or less shall:

10 (a) For the first offense, be guilty of an infraction,  
11 receive a citation, be fined ~~one~~ three hundred dollars, and be  
12 assigned to attend a course as prescribed in section 29-433 if the  
13 judge determines that attending such course is in the best interest  
14 of the individual defendant;

15 (b) For the second offense, be guilty of a Class IV  
16 misdemeanor, receive a citation, and be fined ~~two~~ four hundred  
17 dollars and may be imprisoned not to exceed five days; and

18 (c) For the third and all subsequent offenses, be guilty  
19 of a Class IIIA misdemeanor, receive a citation, be fined ~~three~~  
20 five hundred dollars, and be imprisoned not to exceed seven days.

21 (14) Any person convicted of violating this section,  
22 if placed on probation, shall, as a condition of probation,  
23 satisfactorily attend and complete appropriate treatment and  
24 counseling on drug abuse provided by a program authorized under  
25 the Nebraska Behavioral Health Services Act or other licensed drug

1 treatment facility.

2 (15) Any person convicted of violating this section, if  
3 sentenced to the Department of Correctional Services, shall attend  
4 appropriate treatment and counseling on drug abuse.

5 (16) Any person knowingly or intentionally possessing a  
6 firearm while in violation of subsection (1) of this section shall  
7 be punished by the next higher penalty classification than the  
8 penalty prescribed in subsection (2), (7), (8), (9), or (10) of  
9 this section, but in no event shall such person be punished by a  
10 penalty greater than a Class IB felony.

11 (17) A person knowingly or intentionally in possession  
12 of money used or intended to be used to facilitate a violation  
13 of subsection (1) of this section shall be guilty of a Class IV  
14 felony.

15 Sec. 2. Original section 28-416, Revised Statutes  
16 Cumulative Supplement, 2006, is repealed.